

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**KELVIN BUCK, THOMAS PLUNKETT,  
JEANETTE SELF, CHRISTOPHER TAYLOR,  
JAMES CROWELL, CLARENCE MAGEE, and  
HOLLIS WATKINS, on behalf of themselves  
and all others similarly situated**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 3:11-cv-717-HTW-LRA**

**HALEY BARBOUR, in his official capacity as  
Governor of the State of Mississippi, JIM HOOD,  
in his official capacity as Attorney General of the  
State of Mississippi, and DELBERT HOSEMAN, in his  
official capacity as Secretary of State of the  
State of Mississippi, as members of the State Board  
of Election Commissioners; THE MISSISSIPPI  
REPUBLICAN PARTY EXECUTIVE COMMITTEE;  
THE MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE  
COMMITTEE; and ELIJAH WILLIAMS, in his official  
capacity as Chairman of the Tunica County, Mississippi  
Board of Election Commissioners, on behalf of himself  
and all others similarly situated**

**DEFENDANTS**

**MOTION TO CONSOLIDATE CASE**

COME NOW the plaintiffs, Kelvin Buck, Thomas Plunkett, Jeanette Self, Christopher Taylor, James Crowell, Clarence Magee, and Hollis Watkins, on behalf of themselves and all others similarly situated,<sup>1</sup> pursuant to Fed. R. Civ. P. 42(a), and move the Court to consolidate this case with the case filed in this Court and styled *John Robert Smith, et. al. v. Eric Clark, Secretary of State of Mississippi, et. al.*, Civil Action No. 3:01-CV-855WS on the following grounds:

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<sup>1</sup>Plaintiffs filed the case as a class action. However, plaintiffs have not filed a formal motion for class certification yet.

1. The instant case and the case styled *John Robert Smith, et. al. v. Eric Clark, Secretary of State of Mississippi, et. al.*, Civil Action No. 3:01-CV-855WS involve a common question of law.<sup>2</sup> The common question of law is whether or not current congressional districts are unconstitutionally malapportioned.

2. The instant case is not barred by the doctrine of collateral estoppel<sup>3</sup> nor the doctrine of res judicata. See, *Oreck Direct, LLC v. Dyson, Inc.*, 560 F. 3d 398, 401 (5<sup>th</sup> Cir. 2009).

3. The two cases are related, and consolidation would avoid duplicative litigation. In such a situation, cases that are related should be consolidated. See, *American Home Assurance Company v. Roxco, Ltd.*, 81 F. Supp. 2d 674 (S. D., Miss. 1999).

**WHEREFORE, PREMISES CONSIDERED**, plaintiffs move to consolidate the instant case with the case filed in this Court and styled *John Robert Smith, et. al. v. Eric Clark, Secretary*

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<sup>2</sup>The cases do not involve a common question of fact. The Court inquired at the hearing held in styled *John Robert Smith, et. al. v. Eric Clark, Secretary of State of Mississippi, et. al.*, Civil Action No. 3:01-CV-855WS on November 22, 2011 whether the instant case is barred by the doctrine of collateral estoppel. The answer is “no”, the instant case is not barred by the doctrine of collateral estoppel. In order for collateral estoppel to “bar a lawsuit, three elements must exist: 1) the issue at stake must be identical to the one involved in the prior litigation; 2) the determination of the issue in the prior litigation must have been a critical, necessary part of the judgment in that earlier action; and 3) the special circumstances must not exist which would render preclusion inappropriate or unfair.” *E. E. O. C. v. American Airlines*, 48 F. 3d 164, 167 (5<sup>th</sup> Cir. 1995), quoting, *Texas Pig Stands, Inc. v. Hard Rock Café Int’l, Inc.*, 951 F. 2d 684, 691 (5<sup>th</sup> Cir. 1992) (citing, *Montana v. United States*, 440 U. S. 147, 154, 99 S. Ct. 970, 974, 59 L. Ed. 2d 1979)). See, also, *Recoverededge L.P. v. Pentecost*, 44 F. 3d 1284, 1290 (5<sup>th</sup> Cir. 1995). However, collateral estoppel applies “only when - the facts and the legal standard used to assess the facts are the same in both proceedings.” *Taylor v. Charter Medical Corp.*, 162 F. 3d 827, 832 (5<sup>th</sup> Cir. 1998). When the relevant facts in the second case are significantly different from the facts in the previous case, collateral estoppel does not apply. *Id.* See, also, *Brister v. A.W.I., Inc.*, 946 F. 2d 350 (5<sup>th</sup> Cir. 1991); *E. E. O. C. v. American Airlines*, supra. The significant change and difference in the facts in the two cases constitutes a special circumstance which would render preclusion inappropriate or unfair.

<sup>3</sup>See, footnote 2 above.

*of State of Mississippi, et. al.*, Civil Action No. 3:01-CV-855WS.

THIS, the 7<sup>th</sup> day of December, 2011.

Respectfully submitted,  
KELVIN BUCK, THOMAS M. PLUNKETT,  
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BY: /s/ Carroll Rhodes

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**CERTIFICATE OF SERVICE**

I, Carroll Rhodes, one of the attorneys for the plaintiffs, do hereby certify that I have this date electronically filed the foregoing Amended Complaint with the Clerk of Court using the ECF system which sent notification of such filing to the following:

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This the 7<sup>th</sup> day of December, 2011.

/s/ Carroll Rhodes  
CARROLL RHODES